

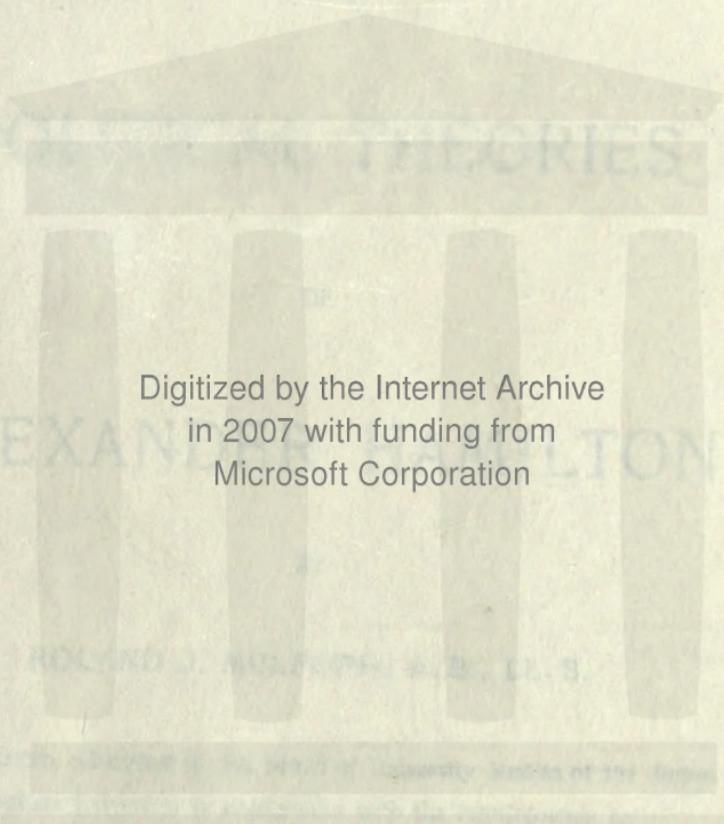
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THE

POLITICAL THEORIES

OF

ALEXANDER HAMILTON

BY

ROLAND J. MULFORD, A. B., LL. B. (1871-)

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PREFACE

Alexander Hamilton, beyond most of his contemporaries, had clearly defined views regarding the nature of the state, government and laws. In their general outlines his ideas are well known. Until now, however, there has been no attempt to make an exhaustive analysis and logical statement of his theories. This the present essay seeks to do.

Especial thanks are due to Dr. W. W. Willoughby, without whose kind and unfailing assistance this work would not have been possible.

The references are to the works of Alexander Hamilton, edited by Hon. Henry Cabot Lodge, N. Y., 1885.

THE POLITICAL THEORIES OF ALEXANDER HAMILTON

PART I.

INTRODUCTION.

Political science has developed in accordance with the needs and demands of the times. As the course of political philosophy is traced this fact stands out more and more prominently. Doctrines and theories have been laid down as each writer has felt impelled to find some defence for, or criticism of, existing conditions. Especially in vindicating the ideas of a revolution, or in establishing new forms of government, new ideals and new doctrines have been formulated. The works in defense of the changes have contained expositions of the principles on which the new governments are founded.

It was under such circumstances that the theories of the American state were brought forth. Though the founders and framers of its constitution were not distinctively political philosophers or theorists, but rather statesmen, they were, nevertheless, led to bring forward and develop the theories on which all government is based. Primarily, however, their contribution was not so much to the theories of political science or to the philosophy of the state, as to the science of government. The problems were concrete and demanded immediate settlement. Thus though an ideal form of government was perhaps before the eyes of these men, this ideal had often to be abandoned to meet the existing circumstances and the con-

ditions with which they were dealing. In some respects they followed closely in the footsteps of earlier political writers and especially of Locke and Montesquieu. They were imbued with the ideas of the period and held to conceptions and theories which a more enlightened and sounder political philosophy has since discarded. To follow their thought it is necessary, therefore, to understand the ideas which were commonly held regarding the origin and nature of society and of the state, and to know the principles upon which legitimate political authority was believed to be founded. We must discover how the men of these times used terms in order to appreciate and understand their attitude of mind toward government, and the nature of their thinking in political matters generally.¹

Society with our forefathers was universally conceived as having its foundation in a state of nature in which all men originally existed and in which they were free from control. By the law of nature they were held to be possessed of certain inviolable and inalienable rights. The social compact was made the basis of society and to enter this society men were supposed to have voluntarily surrendered some of their natural rights, consciously giving them up for the advantages of union with each other. There was further a governmental contract or agreement by which in the same way a state was formed. "Beneath these ideas of political philosophy was what I may call the metaphysical notion that unity can be formed by the conscious action of so many isolated beings—unity can be formed by the separate movement of isolated atoms. Akin to this compact idea and necessarily bound up with it was the idea that man could bind himself; obligation grew out of consent and did not necessarily depend on force, certainly not on pre-existing force. Law was not necessarily the command of a pre-existing superior directed toward an interior, but

¹Cf. A. C. McLaughlin: Social Compact and Constitutional Construction, Amer. Historical Rev., vol. 5, p. 467.

rested like everything else on the consent or acquiescence of the individual."² The individual, however, could not at any time recall his consent and repudiate his obligations. These were held to be real and permanent, and were considered as alienated and not merely delegated.

In order to understand an historical period, it is necessary to keep in mind as well the conditions that existed as the beliefs that prevailed,—to know what men were doing as well as what they were thinking. The times preceding the American Revolution were not "a period of repose, civic or domestic or personal, as we see at the first glance; not a period of quiet respiration for man or society; no normal social movement; the forces of heart and brain not left free to assert themselves in undisturbed or spontaneous action, a time, rather, of exceptional upheaval, perturbation, tumult, in which the English race in America appears to be in desperate struggle for self-preservation against fatal assault from without and from within; hence, a time in which violent political action, and subsidiary to that long, painful and costly military action, absorbs nearly all possible energies locked up in that population of Americans."³ The years of indecision and uncertainty were followed by years of active warfare, sometimes even more discouraging and disheartening than the years of doubt that preceded. When engaged in actual fighting men had little time to plan for the future, the hope of winning the contest and of securing their freedom occupied their attention and they could think and write only of the ends immediately before them. And, after the war had been brought to a successful close, there came years when affairs seemed so hopeless that it has well been called the critical period of American history.⁴ The confederation was despised at home

²McLaughlin, loc. cit.: Hamilton held a view of law different from this. See *infra*, p. 25.

³Tyler: *The Literary History of the American Revolution*, vol. 1, p. 4.

and abroad, and while few defended it, no one who desired a better government had power to secure it; so many were the disintegrating influences at work and so wrapped up was each state in its own selfishness. The public spirited, who realized that some stable and permanent form of government was necessary, in order to secure the freedom they had won, were opposed at every point by the supporters of the separate state governments who desired only the aggrandizement of their local authority and saw in a union their own loss of power. So many were the elements opposed to any strong union and so bitter was the opposition that it was only too true that the constitution was "wrung from the grinding necessity of a reluctant people." But in that constitution, which the conclusion of those years brought forth, there found expression the political thought of the ablest leaders of the times. They had to adapt the theories and ideas they had learned, and the knowledge and experience they had acquired, to a solution of the difficulties before them, and to form a constitution that would meet all criticism and opposition and unite in its support men of every faction. Theirs was indeed a difficult undertaking. There had been republics before, and they had to escape their errors and weaknesses. They had to avoid as well a monarchy as a democracy and to produce a constitution that would meet the needs of the future as well as of the present. Many questions which were new and for which there were no precedents had to be discussed and settled on their merits. There showed itself again and again, however, the wish, so typical of Englishmen, to follow established usage and not to desire new things. All history, or rather all the history then known, was searched to find examples from which they could learn something in regard to the matters before them.

The work they did was thus not only constructive, but in many respects original. Among those to whose labors the successful issue was due no name stands higher than that of Alexander Hamilton.

PART II.

LIFE.

Alexander Hamilton was born on the island of Nevis, one of the British West Indies, on January 11, 1757. His father was a merchant, of Scotch descent, and his mother a French Huguenot. Natural precocity and his early life in the tropics seem to have united in causing a remarkably early development of his powers. When only thirteen he was left in charge of his employer's business during the latter's absence and carried it on successfully. Two years later, in 1772, he was sent to New York for a better education than could be procured in the West Indies and entered King's College, now Columbia University, where he was allowed to carry on his studies as rapidly as he could. In the spring of 1774 he made a visit to Boston, where the feeling of resistance to England was much stronger than in New York. This visit had a great effect on him and helped him much in coming to a decision as to which of the parties in the pending controversy he would side with. His prejudices were in favor of the English Government and he was led to take the colonists' part only after mature and deliberate reflection. Ambition and opportunity for a greater career under a new state doubtless also had their influence. Hamilton first attracted attention when only seventeen by a speech before a large gathering of patriots in New York in support of their cause, and a few months later he wrote his first pamphlets which won him, as soon as their authorship was known, a position among the patriotic party as well as tempting offers from the other side. "The extraordinary ability of these two pamphlets—their fulness in constitutional learn-

ing, their acumen, their affluence in statement, their cleverness in controversial repartee, their apparent wealth in the fruits of an actual acquaintance with public business—led the public to attribute them to some American of mature years and of ripe experience. Even the modern reader of these essays does not need to have an enthusiastic temper to be able to agree with the latest editor of Hamilton that, in view of the age of the writer, these papers are little short of wonderful.”¹ As Curtis also says, “There are displayed in these papers a power of reasoning and sarcasm, a knowledge of the principles of government and of the English constitution and a grasp of the merits of the whole controversy, that would have done honor to any man at any age. To say that they evince precocity of intellect gives no idea of their main characteristics. They show great maturity—a more remarkable maturity than has ever been exhibited by any other person at so early an age, in the same department of thought.”²

Hamilton threw himself heart and soul into the struggle, but by his defense of the Tories against the mobs showed that his sense of order and justice was not lost in the excitement of the revolution, and that his hatred of anarchy and mob rule was not lessened by his desire for independence. At the outbreak of the war he took up military studies and was appointed commander of a company of artillery, which he brought to such a state of discipline as to attract the attention of Greene. He won recognition in bringing up the rear in the retreat from Long Island and the following year was selected by Washington as his aide-de-camp and military secretary. While Hamilton preferred more active service, he learned more thoroughly here than he could have done elsewhere not only the needs and condition of the country but also the weakness and inefficiency of the government.

¹Tyler, *op. cit.*, p. 385.

²Curtis: *Constitutional History of the United States*, vol. 1, p. 274.

While engaged in these arduous duties Hamilton meditated continually on questions of government and finance. He wrote in 1780 an anonymous letter to Robert Morris on the financial affairs of the colonies, explaining the depreciation of the currency, and advocating the establishment of a national bank which would win to the support of the government the moneyed interests of the country. He wrote the same year to James Duane a letter outlining a plan for a stronger national government, finding the cause of the failure of the Continental Congress in the weakness of the central government and the independence of the states, urging the appointment of single men instead of committees at the heads of departments, and a more centralized government which should control absolutely the army and navy and make treaties. Later he urged again on Morris the importance of a national bank. When the war was over Hamilton resigned from the army to practice law and after a few months' study was admitted to the bar and rapidly rose to prominence. He was appointed in 1782 continental receiver of taxes for New York. A scientific plan of taxation, which he proposed, the legislature refused to adopt: but passed resolutions which he introduced calling for a convention of the states to enlarge the powers of the Confederation. His work resulted in his election to the Continental Congress. He found in the independence of the states only a narrowness and selfishness that were bound to lead to internecine war. He saw only the worst side of democracy and learned to distrust the people; he became convinced that their natural propensity was for anarchy and that to restrain this so that it could do no further injury was the first task to be accomplished.³ He saw that a strongly centralized government was a necessity. Toward this he bent all his energies and for this he labored

³Gordy, *A History of Political Parties in the United States*, vol. I, pp. 109 ff., attributes all of Hamilton's political measures to his dread of anarchy.

for the next five years. He resigned from Congress after a year and went back to his law practice. The New York legislature had passed an act giving a right of action to those whose property had been held by Tories during the war. A poor widow relying on this statute sued a rich Loyalist merchant to recover property of which she had been deprived by the fortunes of war. Popular sympathy and support were wholly against the Tory, but a decision against him would have brought about a mass of illegal spoliation and Hamilton willingly and successfully undertook the defense, showing that his regard for law and justice prevailed over his desire for popularity.

When Virginia in 1786 called a convention at Annapolis to consider the establishment of a uniform system of commercial regulations Hamilton secured his appointment as a delegate and there wrote the call for another convention the next year at Philadelphia to consider "the situation of the United States and to devise such other provisions as shall appear necessary to render the Constitution of the United States adequate to the exigencies of the Union."⁴ To this end he got himself elected again as a delegate to the Convention, though with two colleagues bitterly opposed to any stronger government, so that he could not carry the vote of New York on any measure and could only express his individual opinion. He confined his efforts in the Convention to a single speech presenting his own view of the government necessary.

The constitution as adopted contains many provisions suggested by Hamilton,⁵ but the principles of the two are essentially different. Hamilton proposed a senate the members of which were to hold office for life or during good behavior, and were to be chosen by electors who were to be

⁴Works of A. Hamilton, ed. by H. C. Lodge, vol. 1, p. 323.

⁵Thorpe, *The Constitutional History of the United States*, vol. 1, p. 382, gives twenty-two provisions of the Constitution contained in Hamilton's plan.

selected by voters having a property qualification; this senate was to have the sole power of declaring war, besides confirming appointments and ratifying treaties. The president was to be elected in the same way as the senators, but with a double set of electors and was to hold office for life or during good behavior. The legislature was to be chosen by universal manhood suffrage; the members were to serve three years. All money bills were to originate in the legislature. State governors were to be appointed by the president with the same tenure of office as his, they were to have a veto on all acts of the state legislature, and all the state militia officers were to hold commissions from the ~~g~~ederal government.

This was, of course, a much more centralized government than was practicable, and it is very doubtful if Hamilton had any expectation that his suggestions would be adopted. He went back to New York after this speech, returning to take part in the closing debates. He showed his statesmanship in urging all to sign the Constitution, though, as he said, no man's ideas could be more remote from it than his own were known to be.⁶ In the same spirit he wrote with Madison and Jay, when he was only just past thirty, "The Federalist," which has become one of the greatest classics of political thought. It is an exposition not only of the theories on which the constitution is based, but of the principles of free government. Jefferson pronounced it the best commentary on the principles of government that had ever been written.⁷ Kent said that he knew of no work on the principles of free government that could be compared with it, "not even if we resort to Aristotle, Cicero,

⁶In the Convention, Hamilton's "burning zeal for a real and vital union of some kind, his eloquence, and his readiness to concede anything and everything to reach that end, made him an immense power for good. Thus, while Hamilton contributed little to the text of the Constitution, he did perhaps as much as any man to give it being." F. A. Walker: *The Making of the Nation*, p. 26.

⁷Jefferson: Letter to Madison, Nov. 18, 1788.

Machiavel, Montesquieu, Milton, Locke or Burke.⁸ "It marks," says Lodge, "an epoch in the development of free constitutional government, in the art of confederation and in political thought."⁹ Its influence was very great and its immediate results were of the utmost importance in securing the adoption of the constitution. Hamilton's service in writing these essays was only surpassed by his efforts in the convention of New York, where, against the bitterest opposition, "with an eloquence scarcely equalled before or since in America, till Webster's voice was heard,"¹⁰ he won from a majority of two-thirds, bitterly opposed to it, an unconditional adoption.

On Washington's election to the presidency he appointed Hamilton Secretary of the Treasury, and it was here that he left his mark on the future of the country, when he evolved and developed the system on which the finances of the government have since been conducted, and raised it from utter bankruptcy to a stable financial basis.¹¹ He had earlier shown his ability in this department, but now revealed himself as a great minister of state and a master of finance. In the support of his financial measures Hamilton brought forward all his arguments in favor of a strongly centralized government as well as his doctrine of implied powers. This principle of construction he held was a necessary corollary to the constitution, and time has shown that it was an inspiration of genius. The effect of its application has been to change the constitution from a mere body of laws into a living and growing organism.

⁸Kent: *Commentaries*, vol. I, p. 241.

⁹Lodge: *Alexander Hamilton*, p. 82.

¹⁰Fiske: *Critical Period of American History*, p. 343.

¹¹There is an excellent account of Hamilton's financial theories by C. F. Dunbar in the *Quarterly Journal of Economics*, October, 1888. Some Precedents followed by Hamilton, "In this (Hamilton's financial policy), as in other parts of our political system, his impress was lasting. A government is organized once for all, and until that of the United States fairly goes to pieces, no man can do more than alter or improve the work accomplished by Hamilton and his party," says Mr. Dunbar in closing.

Hamilton thus founded the school of loose or broad constructionists, the main object of which has always been to make the federal government powerful and independent in the internal administration of the country. "Three successive parties have carried out the ideas which Hamilton first advanced."¹²

At every opportunity Hamilton supported the national ideas of the government and advocated every measure and act that would increase its power and add to its strength. He was strongly opposed to Genet's course, both in the cabinet and in public.¹³ He defended Jay's treaty with England and won over public opinion to its favor.¹⁴ He was instrumental in putting down the Whisky Rebellion and it was at his suggestion that a force was sent out large enough to crush it without bloodshed.¹⁵ He regarded the Virginia and Kentucky resolutions with great gravity and considered them a most serious menace to the government and one that would justify an appeal to arms.¹⁶ He was strongly opposed to the separation movement of the Federalists in New England.¹⁷ He favored the acquisition by the United States of Louisiana,¹⁸ especially of New Orleans and the control of the Mississippi.¹⁹

After his resignation from the cabinet, Hamilton was the acknowledged leader of the Federalist party and wielded an influence since unparalleled in the United States. He made many devoted friends, but his weakness was in the art of managing men. He desired to force things through and was intolerant of delay or concession in dealing with others. He had little patience with those who differed

¹²Johnston, Lalor's *Cyclopedia of Political Science, Art, Construction.*

¹³Works, vol. 4, pp. 135 ff. and 198 ff.

¹⁴Works, vol. 4, pp. 471 ff.

¹⁵Works, vol. 5, pp. 471 ff.

¹⁶Works, vol. 8, pp. 517, 525.

¹⁷Works, vol. 8, p. 615.

¹⁸Works, vol. 8, pp. 524, 606.

¹⁹Works, vol. 4, p. 37.

from him. He saw for himself so clearly what was needed and what was right, that it was hard for him to understand why others hesitated. Gradually he withdrew from political life and seems to have doubted the stability of the constitution.²⁰ He feared that it was not strong enough to withstand the democratic principles of his opponents; he saw Jefferson in power and his party growing stronger; he saw tendencies which he had so long combated becoming popular. He could not realize how little they would change the government nor that they would undo nothing that he had done. It was to make a nation that Hamilton wrought, "the great idea, of which he was the embodiment, was that of nationality."²¹ It was that for which he stood through all, the nation as the antagonist of the confederacy,²² of democracy and of anarchy. His death in 1804 ended his life at the age of forty-seven, when only half his usefulness would seem to have been accomplished. "Equally apt for war and for civil government, with a profundity and amplitude of view rare in practical soldiers and statesmen he stands in the front rank of a generation never surpassed in history."²³

²⁰"Mine is an odd destiny. Perhaps no man in the United States has sacrificed or done more for the present constitution than myself; and contrary to all my anticipations of its fate, as you know from the very beginning, I am still laboring to prop the frail and worthless fabric." Works, vol. 8, p. 591.

²¹Lodge: Alexander Hamilton, p. 282.

²²Hamilton believed implicitly that, "The confederate principle in its necessary sequence can bring only division, and unity and order are established only in the same measure in which it is overcome." Mulford: The Nation, p. 325.

²³Bryce: The American Commonwealth, vol. 1, p. 8.

PART III.

HAMILTON'S POLITICAL THEORIES.

Hamilton's political theories have rather to do with the science of government than with political philosophy properly so-called, but the two are very closely related, and government looks to political philosophy for the theories on which it is founded.¹

According to Hamilton, social life began with the state of nature, the condition in which men lived before they formed themselves into societies. "When the government enters into a contract with the citizen of a foreign country, it considers him as an individual in a state of nature and contracts with him as such."² Colonists going to a new land are to be considered as having reverted to such a condition.³ No one has authority or moral power over another in such a state, except through the rights which arise from consanguinity.⁴ Hobbes held, Hamilton writes, that man in a state of nature was "perfectly free from all restraint of law and government. Moral obligation, according to him, is derived from introduction of civil society; and there is no virtue but what is purely artificial,

*Origin of
society and
of the state.*

¹In a consideration of Hamilton's political theories, it must be remembered that, as all writers of his time, he was inexact and vague and sometimes misleading in his terminology, the same term being used to represent different ideas. Sovereignty, for example, is used in its modern sense of supreme power (Works, vol. I, p. 204), when he usually adds a qualifying adjective, as complete; sometimes the legislative power is meant (vol. I, p. 75), sometimes government (vol. I, p. 509), or the monarch (vol. I, p. 236), or the state (Federalist, No. 6). The meaning in each case has to be determined from the context.

²Works, vol. 3, p. 34.

³Works, vol. I, p. 97.

⁴Works, vol. I, p. 61.

the mere contrivance of politicians for the maintainance of social intercourse. But the reason he ran into this absurd and impious doctrine was that he disbelieved the existence of an intelligent, superintending principle, who is the governor, and will be the final judge, of the universe. To grant that there is a Supreme Intelligence who rules the world and who has established laws to regulate the actions of his creatures, and still to assert that man, in a state of nature may be considered as perfectly free from all restraints of law and government appears to a common understanding altogether irreconcilable."⁵ The state of nature is not a condition of anarchy.⁶

Natural law and rights.

Natural law or the law of nature is constituted by the Deity as an eternal and immutable law which is indispensably obligatory upon all mankind, prior to any human institution whatever, and is superior to human laws, which derive their authority from it. It is worked out by the rational faculties of man. Natural law invests man with inviolable, inherent, and absolute rights, among which are those of personal liberty and personal safety,⁷ and to share in legislation,⁸ which is founded on the rights of all men to happiness and freedom.⁹ These rights are inalienable and cannot be delegated, as can the other rights and powers of the community.¹⁰ Another natural right is that of resistance to the government men have formed when "the first principles of civil society are violated and the rights of a whole people are invaded."¹¹ All nations ruled by despots have the inherent right to shake off the yoke of servitude (though sanctioned by immemorial usage), and

⁵Works, vol. I, pp. 59, 60.

⁶Hamilton denied the doctrine that the commonwealths (before the adoption of the constitution) were thrown into a state of nature. Works, vol. I, p. 385.

⁷Works, vol. I, p. 60, quoting from Blackstone.

⁸Works, vol. I, p. 66.

⁹Works, vol. I, p. 84.

¹⁰Works, vol. I, p. 484.

¹¹Works, vol. I, p. 129.

to reorganize their government on the principles of civil liberty.¹² Nature has given to every man an equality of rights¹³ and of privileges,¹⁴ and these rights, too, are sacred, written by the hand of the Divinity itself.¹⁵

Hamilton takes it for granted that the origin of political or civil society is in a social compact, a conclusion to which he is necessarily led by his belief in a state of nature. A governmental compact he also expressly recognizes, the origin of government being with him a voluntary compact between the governed and their rulers.¹⁶ A government cannot prescribe conditions contrary to this compact for its members, though it may add new conditions for the admission of strangers; nor can it deprive members of the rights they enjoy under the compact, "unless for some declared cause of forfeiture authenticated with the solemnities required by the existing compact."¹⁷ It is contrary to the nature of the social compact for a citizen to transform himself into an alien by taking part against his country.¹⁸ A constitution is a compact between a society and its members, and both are bound by its terms.¹⁹ The great principle of the social contract is that it is the main end of government to protect the rights of its individual members with the combined strength of the society, but there is this practical modification that the united strength of the community ought only to be employed when there is a reasonable prospect of succeeding in the endeavor; to protect its

Social compact.

¹²Works, vol. 1, p. 108.

¹³Works, vol. 1, p. 72.

¹⁴Works, vol. 1, p. 83.

¹⁵Works, vol. 1, p. 108.

^{16,1}The origin of all civil government, justly established, must be a voluntary compact between the rulers and the ruled, and must be liable to such limitations as are necessary for the security of the absolute rights of the latter; for what original title can any man, or set of men, have to govern others, except their own consent?" Works, vol. 1, p. 61.

¹⁷Works, vol. 3, p. 493.

¹⁸Works, vol. 3, p. 473.

¹⁹Works, vol. 3, p. 495.

citizens a state need not incur loss nor engage in enterprises the success of which would be injurious. The measure is the conviction of every "discerning, unprejudiced man, well acquainted with the facts."²⁰

The individual. The Individual did not, however, occupy much of Hamilton's attention, and was considered only as the constituent unit of the state. Individuals formed political societies,²¹ they were necessary parties to the social compact, and were vested with all the inalienable rights of the law of nature. This compact was made between each individual and the society at large, and no advantage derived from the compact could be refused an individual,²² since, as we have seen, the object of society was his protection, to which each has an equal right.²³ These rights of the individual are inseparably connected with those of the government and the security of the one cannot be separated from that of the other.²⁴ A state must be able to act directly on its constituents.²⁵ Legislation for individuals is a necessity to government.²⁶

Property. Property, in civilized society, Hamilton held to be, if not the creation of the law, at least regulated and defined by it. Its possession or enjoyment was based on the social compact, which implied "between the society and the individual, that he shall retain and be protected in the possession and use of his property so long as he shall observe and perform the conditions which the laws have annexed to the tenure," and it is inconsistent with the idea of property to take it

²⁰Works, vol. 7, p. 3. Hamilton quotes Blackstone with approval. "The principal aim of society is to protect individuals in the enjoyment of those absolute rights vested in them by the law of nature. . . . The first and primary end of human laws is to maintain and regulate these absolute rights of individuals," vol. 1, p. 61.

²¹Works, vol. 1, p. 394.

²²Works, vol. 3, p. 495.

²³Works, vol. 1, p. 393.

²⁴Works, vol. 8, p. 138.

²⁵Federalist, nos. 15, 16, 23.

²⁶Federalist, no. 20.

away without any personal fault in the owner.²⁷ An equality of property could never exist; its inequality was necessary to liberty and was the result of liberty. The fundamental distinction in society was this inequality of property.²⁸

Rights and obligations, Hamilton held, are correlative *Rights*, and depend on each other, for what is given by the law cannot be withheld.²⁹ In other words, rights and duties are reciprocal; an individual cannot be a member of a society for the sake of bearing the burdens, without enjoying the privileges of that society to which he belongs.³⁰ A civil right is one which the constitution and laws have granted,³¹ as distinguished from the inherent rights conferred by the law of nature. An imperfect obligation, "speaking in a political manner," is one imposed neither by natural law nor by the law of civil society, that is, one that cannot be enforced.³² The obligation to fulfil a contract is a fundamental principle of private morality and social justice.³³

The right of resistance and of revolution is allowed when "the first principles of civil society are violated," and when human laws contradict the means necessary to preserve the essential rights of society. In such circumstances men may disregard the common forms of municipal law and resort to the law of nature.³⁴ If remonstrance and petition fail, recourse may be had to forcible resistance.³⁵ The danger from such a popular revolution is that it may go too far.³⁶

The right of suffrage may be limited by a property qualification which excludes "those persons who are in so mean a situation that they are esteemed to have no will of their own" and are therefore not free agents.³⁷ This

²⁷Works, vol. 5, p. 68.

²²Works, vol. 1, p. 11.

²⁸Works, vol. 1, p. 390.

²³Works, vol. 7, p. 411.

²⁹Works, vol. 1, p. 179.

²⁴Works, vol. 1, pp. 8, 129.

³⁰Works, vol. 3, p. 470.

²⁵Works, vol. 1, p. 11.

³¹Works, vol. 1, p. 178.

²⁶Federalist, no. 26.

³²Works, vol. 1, p. 86. This limitation obtained in all the colonies.
Works, vol. 1, p. 395.

right to vote is one of the most important possessed by a subject and ought to be especially regarded by the laws, being as important as property. Liberty is only a right to share in governing, and as the suffrage represents this right, each individual is entitled to it, though it is exercised by the citizens at large.³⁸ The definition of the right of suffrage is a fundamental article of republican government.³⁹

Liberty.

Liberty was to Hamilton the main object of government,⁴⁰ as it was of society. He makes a distinction between natural and civil liberty. Natural liberty is that which belongs to man in a state of nature and is secured to him as an inviolable right by the gift of the Supreme Being.⁴¹ "Civil liberty is only natural liberty modified and secured by the sanctions of civil society," and is necessary to the well-being of society.⁴² The right to share in legislation is necessary to liberty,⁴³ and those who are without this right are without the control over their government which constitutes that moral security that is the very essence of civil liberty.⁴⁴ "Civil liberty cannot possibly have any existence where the society for whom laws are made have no share in making them."⁴⁵ "To usurp dominion over a people in their own despite, or to grasp at a more extensive power than they are willing to intrust, is to violate that law of nature which gives every man a right to his personal liberty, and can therefore confer no obligation to obedience."⁴⁶ Political liberty is founded on the division of the powers of government.⁴⁷ Freedom can be lost only voluntarily; there is one common original for all men and they have one common right, nor is there any

³⁸ Works, vol. 3, p. 486.

³⁹ Federalist, no. 52.

⁴⁰ "A government of laws" is the definition of liberty. Works, vol. 6, p. 27.

⁴¹ Works, vol. 1, p. 60.

⁴² Works, vol. 1, p. 83.

⁴³ Works, vol. 3, p. 487.

⁴⁴ Works, vol. 1, p. 78.

⁴⁵ Works, vol. 1, p. 84.

⁴⁶ Works, vol. 1, p. 61.

⁴⁷ Works, vol. 1, p. 468.

reason why one more than another should exercise power over men without their consent.⁴⁸ To desire to see one part of mankind enslaved by another is contrary to natural rights.⁴⁹ Slavery consists in government by the will of another, life and property depending on the will of the master.⁵⁰ Slaves are both persons and property.⁵¹

Civil and religious liberty are always found together, and *Religion*. if one is lost the other follows. Hamilton seems to favor the separation of church and state. "Would you put your religion in the power of any set of men living?" he asks.⁵² Religion and morality cannot be separated,⁵³ and if religion is abandoned morality must end with it, and the result is anarchy.⁵⁴ Morality can in no way become sooner corrupted than by a dissolution of the ties of marriage, which is one of the chief links of social attachment.

Hamilton distinguished between natural and civil law. *Law*. The law of nature is discoverable by reason; it is independent of human enactment and derives its "validity from divine intention, or from universal nature itself."⁵⁵ Of civil law Hamilton held very nearly the Austinian conception. "A law," he says, "is an obligatory rule of action prescribed by the competent authority, that cannot be such a rule of action or law to the validity of which the assent of any other person is requisite."⁵⁶ "The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society."⁵⁷ The power of making laws is implied in the government, and sanction is necessary to

⁴⁸ Works, vol. 1, p. 6.

⁴⁹ Works, vol. 1, p. 4.

⁵⁰ Works, vol. 1, p. 5.

⁵¹ Federalist, no. 54. Hamilton was much in favor of emancipation of the slaves, and desired to enlist negroes in the army as a step in that direction. Works, vol. 7, p. 564.

⁵² Works, vol. 1, p. 36.

⁵³ Works, vol. 5, p. 409.

⁵⁴ Works, vol. 5, p. 410.

⁵⁵ Willoughby: *The Nature of the State*, p. 95.

⁵⁶ Works, vol. 8, p. 384, vol. 7, p. 123. Federalist, no. 33.

⁵⁷ Federalist, no. 75.

the idea of law; a penalty must be part of a law, otherwise the act is simply a recommendation.⁵⁸ A new law is almost always the alteration of an old one and the government must have this power.⁵⁹ A power to pass all laws whatsoever is the most complete definition of sovereign power possible.⁶⁰ Laws are the acts of a nation for itself.⁶¹ Legal measures may be used to obtain the repeal of a law, but not to obstruct its operation.⁶² If government does not rest on law it must on force.⁶³ A government is supreme because it must judge of the propriety and necessity of the laws which carry out its powers.⁶⁴ The principles of the common law are natural law and natural reason applied to the purposes of society.⁶⁵

In the province of international law, Hamilton was in advance of his time in protesting against the natural right to confiscate debts due subjects by the enemy in time of war, though he made the law of nature a constituent part of the law of nations.⁶⁶ International law, he held, is made up of the law of nature, which is the necessary part, voluntary law, the rules agreed to or acted on by all nations, factitious or conventional law and customary law.⁶⁷ A treaty is binding upon the faith of the nation making it, and abridges the whole legislative power by this moral obligation.⁶⁸ Treaties are "contracts with foreign nations, which have the force of law, but derive it from the obligations of good faith."⁶⁹ The power to make treaties binds the will of the nation, and a treaty supersedes any preceding laws contrary to it.⁷⁰ In a contract between a government and a citizen of a foreign nation, the citizen is held to be in a state of nature and the contract cannot be affected

⁵⁸Federalist, no. 15.

⁶⁵Works, vol. 7, p. 369.

⁵⁹Works, vol. 3, p. 194.

⁶⁶Works, vol. 5, p. 84.

⁶⁰Works, vol. 3, p. 198.

⁶⁷Works, vol. 5, p. 75.

⁶¹Works, vol. 5, p. 305.

⁶⁸Works, vol. 8, p. 383.

⁶²Works, vol. 5, p. 501.

⁶⁹Federalist, no. 75.

⁶³Works, vol. 6, p. 27.

⁷⁰Works, vol. 8, p. 385.

⁶⁴Federalist, no. 33.

by his relations to his state.⁷¹ Hamilton was opposed, on theoretical as well as practical grounds, to the confiscation of the property of innocent owners in time of war,⁷² and even in a state of nature, he says, such confiscation would be held an act of perfidious rapacity.⁷³ Compensation should be made if possible, when property is taken for the general good.⁷⁴

War gives to the participants a natural right to kill in *War*, battle and to capture the property and persons of the enemy. This is according to the law of nature and is an inevitable and necessary result of the state of war.⁷⁵ The causes of war are innumerable though territorial disputes have been the most common.⁷⁶ Commercial motives, since commerce has come to exercise a prevailing influence in the world, have produced as many wars as desire for dominion or territory did before. The genius of republics is not pacific. Nations that are neighbors are naturally enemies unless they become leagued in some kind of alliance or union.⁷⁷

A militia is not dangerous to liberty since citizens can trust always their sons and neighbors, of whom a militia is composed,⁷⁸ and a government can always turn to its citizens to resist military encroachment.⁷⁹ Provision for the national defense should be measured only by the needs and resources of the nation.⁸⁰ A country not exposed to the dangers of attack has a great advantage, its army being so seldom used that, since "the laws are not accustomed to relaxations in favor of military exigencies, the civil state remains in full vigor." The frequent employment of an army increases the importance of the soldier and degrades the condition of the citizen, so that the civil state becomes subordinate to the military.⁸¹ *Militia.*

⁷¹Works, vol. 3, p. 34.

⁷⁷Federalist, no. 6.

⁷²Works, vol. 5, p. 60.

⁷⁸Federalist, no. 29.

⁷³Works, vol. 5, p. 69.

⁷⁹Works, vol. 8, p. 139.

⁷⁴Works, vol. 2, p. 298.

⁸⁰Federalist, no. 31.

⁷⁵Works, vol. 7, p. 202.

⁸¹Federalist, no. 8.

⁷⁶Federalist, nos. 6, 7.

People.

Though Hamilton recognized that the foundation of all government is in the people, he had little confidence in them. "All communities divide themselves into the few and the many." The rich and the well born are opposed to the mass of the people and need to be given a permanent interest in the government in order to check the people's unsteadiness and turbulence. That the voice of the people is the voice of God is not true.⁸² The people in popular governments get the tone of their sentiments from their leaders.⁸³ They need guidance and control. They intend the public good even in their errors, and the wonder is that they err so seldom.⁸⁴ A democracy in which the rulers are chosen really but not nominally by the people is most likely to endure.⁸⁵ If the people cannot trust their representatives they may revert to their original right of self-defense.⁸⁶ The people are sovereign in a republic and it is a fundamental maxim of republican government that all power meditately or immediately is derived from their consent. "A power conferred by the representatives of the people, if warranted by the constitution under which they act, is a power derived from the people."⁸⁷ A constitution is created by the people⁸⁸ and everything beyond it must be left to them.⁸⁹ The English constitution is founded on the principle that no laws have validity without the people's consent.⁹⁰ The true principle of a republic is that it is the people who should choose whom they please to govern them.⁹¹ It is essential to liberty that the government and people should have a common interest.⁹² If it be proved that the people must have a master and cannot govern themselves, then is a despotism the only outcome.⁹³ Precedents and examples have no influence

⁸²Works, vol. 1, p. 382.

⁸³Works, vol. 7, p. 9.

⁸⁴Federalist, no. 71.

⁸⁵Works, vol. 7, p. 498.

⁸⁶Federalist, no. 28.

⁸⁷Works, vol. 2, p. 18.

⁸⁸Works, vol. 3, p. 495.

⁸⁹Federalist, no. 30.

⁹⁰Works, vol. 1, p. 85.

⁹¹Works, vol. 1, p. 436.

⁹²Federalist, no. 52.

⁹³Works, vol. 3, p. 505.

over the action of a people that desires to revolt.⁹⁴ The power of the people is superior to that of the judiciary or legislature.⁹⁵ A federal government should rest as much as possible on the shoulders of the people,⁹⁶ and the popular branch of a government should have a broad foundation.⁹⁷ The people must ratify a government, "it must rest on the solid basis of the consent of the people. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority."⁹⁸ The nation is the constituent of ~~its~~ government and⁹⁹ "the very idea of the right and power of the people to establish government presupposes the duty of every individual to obey the established government."¹⁰⁰ However little Hamilton might trust the action of the people, it is unquestionable that he believed all power to be derived from them.

All governments, therefore, even despotisms and *Opinion*.
tyrannies, are very largely dependent on opinion, which has especial influence in republics;¹⁰¹ but such a declaration as that of the French republicans, that they would treat as enemies all who desired to preserve their princes or privileged orders, was an attack on the freedom of opinion of all mankind.¹⁰² According to this reasoning a man has the right to live under any form of government he desires.

The references that Hamilton makes to the general will show that he believed it to be the ultimate source of all political power. In a discussion of the treaty-making power he says that "the treaty power binding the will of the nation must, with its constitutional limits, be paramount to the legislative power, which is this will."¹⁰³ In speaking of opinion he says that in a free republic the will of the people makes the essential principle of government and is the source of all law.¹⁰⁴

General will.

⁹⁴ Works, vol. 7, p. 12.

¹⁰⁰ Works, vol. 7, p. 155.

⁹⁵ Federalist, no. 78.

¹⁰¹ Works, vol. 1, p. 429.

⁹⁶ Works, vol. 8, p. 596.

¹⁰² Works, vol. 4, p. 109.

⁹⁷ Works, vol. 1, p. 398.

¹⁰³ Works, vol. 8, p. 385.

⁹⁸ Federalist, no. 22.

¹⁰⁴ Works, vol. 1, p. 429.

⁹⁹ Works, vol. 5, p. 314.

Majority.

The majority represents the general will. "Shall the majority govern or be governed?" is, stated again, "Shall the nation rule or be ruled?" or, "Shall there be government or no government?" Force can be employed to compel a minority to submit to the laws. A man holding contrary views is neither a good citizen nor republican since he tries to establish the will of a part against that of the whole and the will of a faction against that of a nation.¹⁰⁵ It is a fundamental maxim of republican government that requires the sense of the majority to prevail. To allow a minority a negative upon a majority has always proved an unmixed evil; it necessarily subjects the sense of the greater number to that of the less.¹⁰⁶ *possibly*

Parties.

Parties must exist in all political bodies and are of great service in attracting public attention whenever the majority or the opposition appears disposed to exceed its proper limits; so that the people warned of the danger may take measures to guard against it.¹⁰⁷

Sovereignty.

"In every civil society there must be a supreme power to which all the members of that society are subject, for otherwise there could be no supremacy or subordination—that is, no government at all."¹⁰⁸ This is a definition of sovereignty, but sovereignty and government are confused. A divided sovereignty Hamilton considered possible. The word supreme can be used of a federal government as well as of the governments of the commonwealths or kingdoms which compose it. Within their spheres the laws of each are supreme, and as to other objects their powers are concurrent.¹⁰⁹ The meaning of the axiom that there cannot be two supreme powers is merely that they cannot be supreme over each other; two supreme powers "are inconsistent only when they are aimed at each other or at one indivisible object."¹¹⁰ To declare independence, levy an

¹⁰⁵ Works, vol. 6, p. 23.

¹⁰⁶ Federalist, no. 22.

¹⁰⁷ Federalist, no. 26.

¹⁰⁸ Works, vol. 1, p. 75.

¹⁰⁹ Works, vol. 1, p. 483.

¹¹⁰ Works, vol. 1, p. 478.

army, create a navy, emit money, make alliance with foreign powers, and appoint a dictator, are all implications of a complete sovereignty.¹¹¹ To exercise exclusive legislation or to pass all laws whatsoever is as complete a designation of sovereign power as language affords.¹¹² The suffrage is part of the sovereignty of a state.¹¹³ In a federal state the powers of the general government are as to its objects sovereign, "the power which can create the supreme law of the land in any case, is doubtless sovereign as to such a case."¹¹⁴ The necessity of concurrent jurisdiction in certain cases results from this division of the sovereign power.¹¹⁵ That the powers of sovereignty are divided between a federal and the commonwealth governments does not prevent the powers of each from being sovereign as to the objects intrusted to it, for otherwise a federal government "would furnish the singular spectacle of a political society without sovereignty or of a people governed without government." The sovereignty of each as to certain things is supreme.¹¹⁶ But sovereignty in the federal government and complete independence in its members is irreconcilable; it is "the political monster of an imperium in imperio."¹¹⁷ In a federal state each commonwealth has a distinct sovereignty.¹¹⁸ The people of a republic are its sovereigns,¹¹⁹ and this sovereignty they can vest in their representatives.¹²⁰ "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent."¹²¹ The power of dismembering the state is a necessary appendage of sovereignty¹²² and the right to grant lands presupposes a full right to sovereignty and territory.¹²³ To con-

¹¹¹Works, vol. 1, p. 204.

¹¹²Works, vol. 3, p. 198.

¹¹³Works, vol. 3, p. 487.

¹¹⁴Works, vol. 3, pp. 182, 200, 205.

¹¹⁵Federalist, no. 32.

¹¹⁶Works, vol. 3, pp. 181, 182.

¹¹⁷Federalist, no. 15.

¹¹⁸Works, vol. 1, p. 237.

¹¹⁹Works, vol. 1, p. 510.

¹²⁰Works, vol. 7, p. 10.

¹²¹Federalist, no. 81.

¹²²Works, vol. 7, p. 10.

¹²³Works, vol. 4, p. 466.

quer a country gives sovereign jurisdiction over the conquered territory.¹²⁴ The members of a federal state cannot have uncontrolled sovereignty over their own internal police.¹²⁵

Socialism. Socialism was beginning to come into prominence, but it had no attraction for Hamilton. "If Burr's conversation is to be credited," he says, "he is not far from being a visionary. . . . It is ascertained in some instances that he has talked perfect Godwinism."¹²⁶

Anarchy. Anarchy was the evil that Hamilton especially dreaded,¹²⁷ he had experience with it in the Continental Congress and it made a lasting impression.¹²⁸ Too little power leads to anarchy,¹²⁹ as does even more surely contempt for the laws,¹³⁰ and anarchy is the surest road to despotism;¹³¹ to avoid it a strong and energetic government is necessary.¹³²

Despotism. Despotism Hamilton feared almost as much as he did anarchy and he defined it as a government of force.¹³³ Arbitrary government is not confined to a monarchy, but exists wherever people are governed by laws in the making of which they have no share.¹³⁴ If people's morals be corrupted the fear of despotism alone can govern men and keep them within the limits of social duty.¹³⁵ A concentration of all the different departments of government is as sure a road as there is to despotism.¹³⁶

Aristocracy. Hamilton's distrust of the people made him an aristocrat and a favorer of a government of the better classes.¹³⁷ He preferred an aristocracy to any other form of govern-

¹²⁴ Works, vol. 3, p. 184.

¹²⁰ Works, vol. 6, p. 26.

¹²⁵ Works, vol. 1, p. 205.

¹²¹ Works, vol. 6, p. 26.

¹²⁶ Works, vol. 8, p. 583.

¹²² Federalist, no. 26.

¹²⁷ Works, vol. 8, p. 264. Gordy:

¹²³ Works, vol. 6, p. 27.

op. cit. vol. 1, pp. 110 ff.

¹²⁴ Works, vol. 1, p. 77.

¹²⁸ Works, vol. 5, p. 343.

¹²⁵ Works, vol. 5, p. 410.

¹²⁹ Works, vol. 1, p. 234.

¹²⁶ Works, vol. 7, p. 299.

¹³⁷ Works, vol. 1, p. 382. Hamilton in his earlier days "thought sentiments dangerously aristocratic and leaned strongly to democratic principles." Lodge: Alexander Hamilton, p. 45; Ford: The Rise and Growth of American Politics, p. 59.

ment and admired a monarchy only because it was strong enough to ensure liberty. He desired a government that was strongly centralized, one "framed for durable liberty," where "not less heed must be paid to giving the magistrate a proper degree of authority, than to guard against encroachments upon the rights of the community. As too much power leads to despotism, too little leads to anarchy and both eventually to the ruin of the people."¹³⁸ The power of an absolute ruler is perpetual, not temporary.¹³⁹ The idea of introducing a monarchy into this country he considered entirely visionary¹⁴⁰ and without the slightest foundation.¹⁴¹

To a pure democracy Hamilton was very much opposed, *Democracy.* and even if it were practicable, he denied that it would be the most perfect form of government,¹⁴² though as the creature of the people it was the form of government that could count most surely on their support.¹⁴³ But the ancient democracies never possessed one feature of good government; their peoples were ungovernable mobs led blindly as their passions dictated; their very character was tyranny.¹⁴⁴ A representative democracy, however, Hamilton as strongly favored. The evils of former democracies were due to the confusion of the popular with other principles and the failure to separate the different parts of government and to keep them distinct.¹⁴⁵

Hamilton was in reality strongly attached to the republican theory of government and wanted to see an equality of political rights established, exclusive of all hereditary distinctions.¹⁴⁶ The success of such a form of government he thought doubtful as it had not yet been proved that it could secure the stability and order necessary to public *Republic.*

¹³⁸ Works, vol. I, p. 234.

¹³⁹ Works, vol. I, p. 78.

¹⁴⁰ Works, vol. 2, p. 268.

¹⁴¹ Works, vol. 8, p. 263.

¹⁴² Works, vol. I, p. 431.

¹⁴³ Works, vol. 8, p. 139.

¹⁴⁴ Works, vol. I, p. 431.

¹⁴⁵ Works, vol. 7, p. 498.

¹⁴⁶ Works, vol. 8, p. 263.

strength and private safety.¹⁴⁷ Instability was the great evil to be avoided.¹⁴⁸ "The essential criteria of a government purely republican are that the principal organs of the executive and legislative departments be elected by the people and hold their offices by a responsible and temporary tenure."¹⁴⁹ A large and well established republic could lose its liberty for no other reason than anarchy.¹⁵⁰ The maxims of a republican government are that all government is a delegation of power¹⁵¹ and that all power is derived from the consent of the people.¹⁵² Rights under a republic are modified by the principles of the governmental compact on which the government is formed.¹⁵³ The right of voting should stand foremost in the estimation of the laws in a republic.¹⁵⁴ There is danger of corruption in the elective offices of a republic,¹⁵⁵ though a republican form of government presupposes the existence of certain virtues in a higher degree than other forms of government.¹⁵⁶

Representation is the great principle that makes lasting and successful republics possible, and this discovery, Hamilton said, had made its principal progress towards per-

¹⁴⁷ "I said that I was affectionately attached to the republican theory. This is the real language of my heart, which I open to you in the sincerity of friendship; and I add that I have strong hopes of the success of that theory; but, in candor, I ought also to add that I am far from being without doubts. I consider its success as yet a problem. It is yet to be determined by experience whether it be consistent with that stability and order of government which are essential to public strength and private security and happiness." Works, vol. 8, p. 264. Compare in connection with this the words of Gouverneur Morris, Hamilton's most intimate friend: "Hamilton hated republican government because he confounded it with democratical government; and he detested the latter because he believed that it would end in despotism and be in the meantime destructive of public morality." Diary and Letters of G. Morris, vol. 2, p. 523. Hamilton's distrust of the people made him distrustful of a government in which they had complete power, but he believed in a republic.

¹⁴⁸ Works, vol. 1, p. 458.

¹⁴⁹ Works, vol. 3, p. 493.

¹⁵⁰ Works, vol. 8, p. 607.

¹⁵¹ Works, vol. 3, p. 486.

¹⁵² Works, vol. 6, p. 26.

¹⁵³ Federalist, no. 22.

¹⁵⁴ Works, vol. 3, p. 183.

¹⁵⁵ Federalist, no. 55.

¹⁵⁶ Works, vol. 2, p. 18.

fection in his time.¹⁵⁷ He meant that it had become more widely known and recognized in political science, for the English constitution, as he said, rested on the doctrine that the laws derive their force from the consent of the people, that is, given through the deputies whom they have elected.¹⁵⁸ "Representation is imperfect in proportion as the current of popular favor is checked."¹⁵⁹ Their representatives are to secure safety to the people,¹⁶⁰ they derive all their powers from the people and can, therefore, have no greater power than their constituents had originally in themselves.¹⁶¹ The confidence of the people is more easily gained by good administration than by numerous representatives.¹⁶² Representatives must be trusted or delegated authority must end,¹⁶³ and if they betray their trust they may, if necessary, be expelled by force.¹⁶⁴ The whole power of the government should be in the hands of the people's representatives,¹⁶⁵ but the idea of actual representation of all classes of the people, by persons of each class is altogether visionary.¹⁶⁶ A great advantage in a large republic is found in the fact that the representatives have such intimate knowledge of local affairs.¹⁶⁷

Government rests on the consent of the governed.¹⁶⁸ *Government.*
When a government is first formed every power of the community is delegated, because it is to include every possible object. Only the inalienable rights of man are reserved.¹⁶⁹ A government may exist without any formal organization or precise definition of its powers,¹⁷⁰ but every power vested in a government is in its nature sovereign, including by force of the term a right to use all the means suitable to the

¹⁵⁷ *Federalist*, no. 9.

¹⁵⁸ *Works*, vol. I, p. 85.

¹⁵⁹ *Works*, vol. I, p. 436.

¹⁶⁰ *Works*, vol. I, p. 459.

¹⁶¹ *Works*, vol. I, p. 73.

¹⁶² *Works*, vol. I, p. 431.

¹⁶³ *Federalist*, no. 26.

¹⁶⁴ *Federalist*, no. 28.

¹⁶⁵ *Federalist*, no. 28.

¹⁶⁶ *Federalist*, no. 35.

¹⁶⁷ *Federalist*, no. 36.

¹⁶⁸ *Works*, vol. 2, p. 18, vol. I, p. 61.

¹⁶⁹ *Works*, vol. I, p. 484.

¹⁷⁰ *Works*, vol. 2, p. 24.

attainment of the ends of such power.¹⁷¹ A government can, however, pass only "such laws as are necessary and proper to accomplish the objects entrusted to it. For no government has the right to do merely as it pleases."¹⁷² Government is either of laws or of force.¹⁷³ Some power of coercion is necessary. Government presupposes control, which is the power that restrains individuals from injuring each other and brings them to co-operate in a common end. Some sort of government is a necessity for men,¹⁷⁴ but a government must be fitted to a nation.¹⁷⁵ The objects for the formation of a government are safety for the people and energy in the administration; a union of these is necessary for the public welfare.¹⁷⁶ The essential principles that support a government are interest, love of power, attachment, force and influence.¹⁷⁷ Every government should contain within itself the means of providing for its own preservation.¹⁷⁸ The administration of a government includes all the operations of the body politic¹⁷⁹ and confidence in and obedience to a government depend on its administration.¹⁸⁰ To bind a government with restrictions that cannot be observed is most inadvisable.¹⁸¹ Government was instituted because the passions of men will not conform to the dictates of reason and justice without constraint.¹⁸² The genius or spirit of a government must be relied on for permanent effects; these cannot be accomplished by particular provisions or laws.¹⁸³ A government

¹⁷¹ Works, vol. 3, p. 181.

¹⁷² Works, vol. 3, p. 188.

¹⁷³ Works, vol. 7, p. 395. *Federalist*, no. 15.

¹⁷⁴ Works, vol. 6, p. 27.

¹⁷⁵ Works, vol. 8, p. 522.

¹⁷⁶ Works, vol. 1, p. 459. *Federalist*, no. 70.

¹⁷⁷ Works, vol. 1, p. 365.

¹⁷⁸ *Federalist*, no. 59.

¹⁷⁹ *Federalist*, no. 72.

¹⁸⁰ *Federalist*, no. 27. That the government which is best administered is best, is a political heresy. *Federalist*, no. 68.

¹⁸¹ *Federalist*, no. 25.

¹⁸² *Federalist*, no. 15.

¹⁸³ *Federalist*, no. 83.

is formed for future contingencies.¹⁸⁴ A supreme authority is necessary in every government, for no supremacy means no government.¹⁸⁵ It is necessary to protect the rights of the government as those of its citizens.¹⁸⁶

The relation of commerce and manufactures to government was of especial interest to Hamilton. He pointed out that a unity of commercial as well as of political interests could, in the case of neighboring republics, result only from a federal government,¹⁸⁷ the truth of which has been proved in the German empire as well as in the United States. The prosperity of its commerce should be an object of care to the state.¹⁸⁸ The advantage of unrestrained commerce between the different commonwealths of a federal state is beyond question.¹⁸⁹ To a commercial people a navy is a necessity.¹⁹⁰ The independence and security of a country depend on its possession within itself of all the requisites of national supply, including manufactures; "the possession of these is necessary to the perfection of the body politic, to the safety as well as to the welfare of the society."¹⁹¹ Everything that tends to increase the total amount of industry and wealth is beneficial to a community.¹⁹² From Hamilton's report on manufactures sprang the protectionist policy, favoring the protection of nascent industries,¹⁹³ though it was many years before it was taken up as a system. He advocated also the support of internal improvements by the general government.¹⁹⁴

"Money," Hamilton said, "is with propriety considered *Revenue.*" as the vital principle of the body politic," and a government must have complete power to procure a regular and sufficient revenue,¹⁹⁵ and must possess the unqualified power of taxation,¹⁹⁶ for power without revenue is in poli-

¹⁸⁴ *Federalist*, no. 34.

¹⁹¹ *Works*, vol. 3, p. 356.

¹⁸⁵ *Works*, vol. 1, p. 75.

¹⁹² *Works*, vol. 3, p. 361.

¹⁸⁶ *Works*, vol. 8, p. 138.

¹⁹³ *Works*, vol. 3, pp. 364, 366, 372.

¹⁸⁷ *Federalist*, no. 11.

¹⁹⁴ *Works*, vol. 3, p. 379.

¹⁸⁸ *Federalist*, no. 12.

¹⁹⁵ *Federalist*, no. 30.

¹⁸⁹ *Federalist*, no. 11.

¹⁹⁶ *Federalist*, no. 31.

¹⁹⁰ *Federalist*, no. 24.

tical society only a name.¹⁹⁷ A federal government has the great advantage that it can use in each commonwealth the system of taxation in vogue within that commonwealth.¹⁹⁸ A general power of taxation must be provided in a constitution.¹⁹⁹

Convention.

Hamilton advocated before anyone else the calling of a convention. He was convinced that the people of the different states were competent to establish a general government by their own direct action.²⁰⁰ To the objection that the states could not ratify a plan of government not provided for by the Articles of Confederation, Hamilton asks, "May not the states themselves, in which no constitutional authority equal to this purpose exists in the legislatures, have had in view a reference to the people at large?"²⁰¹ He thought that a convention might agree on a federal union but that the states never would.²⁰²

Constitution.

A constitution is the creation of the people and they are bound by it while they allow it to remain in force. It is a compact between the society and each individual, and the society cannot break its terms. Society has a right to abrogate its constitution and to make a new one, but it must do so with the same solemnities with which the former was made, and until dissolved both the society and the individuals are bound by the old constitution.²⁰³ A republic rests on the right of the people to make and alter their fundamental laws.²⁰⁴ Constitutions are good as they harmonize with the natural operation of things,²⁰⁵ and must therefore necessarily be adapted to the needs of the people and the country. Good constitutions are formed on a com-

¹⁹⁷ Works, vol. I, p. 249.

¹⁹⁸ Federalist, no. 36.

¹⁹⁹ Federalist, no. 30.

²⁰⁰ Works, vol. I, p. 212. Curtis, *op. cit.*, vol. I, p. 277. Burgess: Political Science and Constitutional Law, vol. I, p. 102.

²⁰¹ Works, vol. I, p. 364.

²⁰² Works, vol. I, p. 213.

²⁰³ Works, vol. 3, p. 495.

²⁰⁴ Works, vol. 7, p. 155.

²⁰⁵ Works, vol. I, p. 428.

parison of individual liberty and strong government; if the tone of either be too high the other will be too much weakened.²⁰⁶ A constitution should contain only general provisions since it must of necessity be permanent and cannot calculate probable changes.²⁰⁷ When a society first forms a government it may impose any conditions it desires, but after it has adopted a constitution that must be the measure of its discretion.²⁰⁸ No individual living under a constitution ought to be deprived of any right or privilege granted by the constitution, except in the manner provided for therein.²⁰⁹ A national constitution must extend its operations to individuals.²¹⁰ Everything beyond the constitution must be left to the people.²¹¹ An act of a federal government which alters the law of a commonwealth cannot be unconstitutional for that reason alone.²¹²

In the construction of a constitution the powers which concern the general administration must be given a broad scope.²¹³ The criteria are: is the end within the specified powers and does the proposed measure abridge an existing right?²¹⁴ Implied powers are delegated by a constitution as well as express ones, the only consideration is whether the means to be employed have a natural relation to any of the acknowledged ends of government.²¹⁵ No particular power is greater than that implied in a general one.²¹⁶ Undefined powers are discretionary and limited only by the purpose for which they were given.²¹⁷

Legislation and taxation without representation are inconsistent with the first principles of the English constitution,²¹⁸ which is founded on the democratic idea that no

Constitutional construction.

English Constitution

²⁰⁶ Works, vol. 1, p. 459.

²⁰⁹ Works, vol. 6, p. 561.

²⁰⁷ Works, vol. 1, p. 486.

²¹⁰ Federalist, no. 16.

²⁰⁸ Works, vol. 3, p. 491.

²¹¹ Federalist, no. 30.

²¹² Works, vol. 3, p. 194. Hamilton did not see that this destroyed the sovereignty of the commonwealth and rendered nugatory his doctrine of a divided sovereignty.

²¹³ Works, vol. 3, p. 190.

²¹⁶ Works, vol. 3, p. 199.

²¹⁴ Works, vol. 3, p. 192.

²¹⁷ Works, vol. 1, p. 204.

²¹⁵ Works, vol. 3, p. 184.

²¹⁸ Works, vol. 1, p. 6.

laws have force without the consent and approval of the people given in the persons of their representatives elected by themselves.²¹⁹ The existence of the House of Commons and of the English constitution itself depends on this right to elect representatives, and it is the inalienable birthright of every Englishman to share in making the laws which are to govern him.²²⁰ The rights of the American colonists were secured to them by the genius of the British constitution and the law of nature, and the House of Commons was in no way privileged to dispose of those rights.²²¹ "The law of nature and the British constitution confine allegiance to the person of the king and found it upon the principle of protection."²²² The House of Lords, forming a permanent barrier against every dangerous innovation of either the people or the crown, is an institution of the greatest strength.²²³ The British constitution is the best the world has produced, having for its object public strength and individual security, and if once formed it would maintain itself.²²⁴

Hamilton's influence on the constitution of the United States was very great.²²⁵ He supported on every occasion measures securing a strong national government, and favored making it powerful at the expense of the commonwealths.²²⁶ He considered the constitution as adopted far from perfect.²²⁷ As the constitution is the creation of the people so all offices are holden of the government, or, in other words, of the people through the government.²²⁸ The constitution was framed on truly republican principles and could not subvert the governments of the commonwealths or oppress the people.²²⁹ The establishment of the writ of habeas corpus, the prohibition of ex post facto

²¹⁹ Works, vol. I, p. 85.

²²⁵ Burgess, loc. cit.

²²⁰ Works, vol. I, p. 66.

²²⁶ Works, vol. I, pp. 331 ff.

²²¹ Works, vol. I, p. 7.

²²⁷ Works, vol. 8, p. 591.

²²² Works, vol. I, p. 65.

Federalist, no. 85.

²²³ Works, vol. I, p. 371.

²²⁸ Works, vol. 7, p. 305.

²²⁴ Works, vol. I, pp. 370, 382.

²²⁹ Works, vol. I, p. 479.

laws and of titles of nobility were the greatest securities to liberty and republicanism.²³⁰ The constitution is the supreme law of the land,²³¹ and any doctrine vesting in the legislative department unlimited discretion would destroy the very idea of a constitution.²³² The constitution is always obligatory on the legislature, laws only till the legislature itself has annulled or repealed them.²³³ All powers not delegated to the general government by the constitution are reserved to the states, but the implied powers are delegated as effectually as the express ones.²³⁴ It is intended in our constitution to give a liberal construction to the exercise of its powers.²³⁵ The inexpediency of a measure does not make it unconstitutional.²³⁶ Where the will of the people in the constitution is opposed to the will of the legislature, the former, since it is fundamental, must prevail.²³⁷

"It is a fundamental maxim of free government that the three great departments of power, legislative, executive, and judiciary shall be essentially distinct and independent, the one of the other."²³⁸ They can be kept separate by giving each separate support and provision, and sufficient authority to act as a check on the others.²³⁹

Hamilton believed in a strong single executive. A weak executive, he held, makes a weak and therefore a bad government. "Energy in the executive is a leading character in the definition of good government."²⁴⁰ The objects of the executive department are to make treaties, war and

²³⁰ *Federalist*, no. 84.

²³¹ *Works*, vol. 3, p. 182.

²³² *Works*, vol. 7, p. 271, vol. 8, p. 382, vol. 7, p. 130.

²³³ *Works*, vol. 7, p. 131.

²³⁴ *Works*, vol. 3, pp. 183, 184.

²³⁵ *Works*, vol. 3, p. 187.

²³⁶ *Federalist*, no. 32.

²³⁷ *Federalist*, no. 78.

²³⁸ *Works*, vol. 7, pp. 284, 290. *Federalist*, no. 71.

²³⁹ *Works*, vol. 7, p. 292.

²⁴⁰ *Federalist*, no. 70.

peace, and to execute and interpret the laws.²⁴¹ The powers of the purse and of the sword must be kept separate, but both must be given to the government and there can be no danger if they are divided and each given to a different department.²⁴² The people cannot be trusted to choose directly so important an official as the chief magistrate, which can best be done by an electoral college,²⁴³ though the wishes of the people should operate in his choice²⁴⁴ and he should be dependent on them alone for his continuance in office.²⁴⁵ The executive is much less likely to become dangerous in a united than in a disunited country.²⁴⁶ The executive authority should be vested in a single magistrate,²⁴⁷ as there is danger to the people in a plural executive which tends to conceal faults and destroy responsibility,²⁴⁸ and deprives the people of their securities for the faithful exercise of power.²⁴⁹ A veto in the executive is indispensable against the encroachments of the legislature,²⁵⁰ and there is a greater danger of its being used too seldom than too often; for this reason a qualified veto is better.²⁵¹ A comparatively long term secures greater stability in the system of administration and calls forth greater interest in the executive,²⁵² but he should, especially if the term be short, be re-eligible.²⁵³ He should command the national forces and have the power of pardoning offenses²⁵⁴ and of making treaties and appointments to high offices, with the aid of the legislature.²⁵⁵ He must have adequate means of support secured to him during his tenure of office.²⁵⁶ The executive, as much as the legislature, represents the will of the nation.²⁵⁷

²⁴¹Works, vol. 2, p. 20.

²⁴⁰Federalist, no. 70.

²⁴²Works, vol. 1, p. 468.

²⁵⁰Federalist, no. 66.

²⁴³Federalist, no. 68.

²⁵¹Federalist, no. 73.

Works, vol. 1, p. 431.

²⁵²Federalist, no. 71.

²⁴⁴Federalist, no. 68.

²⁵³Federalist, no. 72.

²⁴⁵Federalist, no. 68.

²⁵⁴Federalist, no. 74.

²⁴⁶Federalist, no. 26.

²⁵⁵Federalist, nos. 74, 75, 76.

²⁴⁷Federalist, nos. 69, 74.

²⁵⁶Federalist, no. 73.

²⁴⁸Federalist, no. 70.

²⁵⁷Works, vol. 5, p. 314.

The propriety of a national judiciary in the abstract is *Judiciary.* not disputed²⁵⁸ nor the propriety or advantage of a national court of final and supreme jurisdiction.²⁵⁹ It must, however, especially under a limited constitution, be completely independent,²⁶⁰ and the more so as it is the weakest of the three departments of government and the least dangerous to the political rights and to liberty.²⁶¹ The courts are an intermediate body between the people and the legislature. They exist in order, among other things, to keep the latter within the limits of their authority; for they and not the legislature are the interpreters of the laws, and they are to be governed by the constitution and not by the legislature.²⁶² Their powers should be as wide as possible, and there is no danger of their encroaching on the legislative authority.²⁶³ The standard of good behavior for the judicial tenure of office is one of the greatest modern improvements in the practice of government, and is a barrier as well against the tyranny of a monarch as the oppressions of a democracy.²⁶⁴ Like the executive the judiciary should have a fixed and settled provision.²⁶⁵ The state courts should have a concurrent jurisdiction with the federal where not prohibited.²⁶⁶ It is as difficult, as it is necessary, to obtain a court for impeachments under a republican form of government because such a court cannot be wholly distinct from the government.²⁶⁷ It is much better to have the representatives make up such a court than the judiciary.²⁶⁸

The legislature "is the will of the government, it prescribes universally the rule of action and the sanctions which are to enforce it."²⁶⁹ Its power is that of prescrib- *Legislature.*

²⁵⁸ Federalist, no. 78.

²⁶¹ Federalist, no. 78.

²⁵⁹ Federalist, no. 81.

²⁶² Federalist, no. 79.

²⁶⁰ Federalist, nos. 78, 81, 73.

²⁶³ Federalist, no. 82.

²⁶¹ Works, vol. 7, p. 286.

²⁶⁴ Federalist, no. 65.

 Federalist, no. 78.

²⁶⁵ Federalist, nos. 65, 66.

²⁶⁶ Federalist, no. 78.

²⁶⁶ Works, vol. 7, p. 285.

²⁶⁷ Federalist, no. 81.

ing rules for the community, or in other words, of making laws.²⁷⁰ The power of a legislature is delegated under a constitution and is limited, its authority being defined by the instrument of government.²⁷¹ Its deliberative faculty is subject to a limited discretion by the constitution, which can make it as to some objects only executive.²⁷² It binds itself and succeeding legislatures in granting vested rights, or in acts which pledge the public faith. It is an exaggeration to say that a legislature cannot bind itself, and this is especially true under a constitution.²⁷³ The legislature is the most powerful of the three departments of government²⁷⁴ and the most apt to encroach on the others.²⁷⁵ It is a serious mistake, however, to impose restraints on the legislature in respect to the military establishment in times of peace,²⁷⁶ or in the means of providing for the national defense;²⁷⁷ for the legislature is the safest ultimate depository of the powers of government in which a power equal to every emergency must exist, and the jealousy rightly existing towards an hereditary monarchy should not apply to a legislature.²⁷⁸ It cannot depart from a constitution though it think that the people desire it to do so.²⁷⁹ A legislature should regulate the election of its own members.²⁸⁰ There is no advantage in having all elections held in the counties where the electors live.²⁸¹ Discussion and deliberation are necessary in a legislative body and promptness of decision is more often an evil than a benefit.²⁸² The legislature is not above the law, but, till it annuls the law, is bound by it.²⁸³ A single body for a

²⁷⁰ Works, vol. 2, p. 20, vol. 8, p. 384. *Federalist*, nos. 33, 75.

²⁷¹ Works, vol. 7, p. 271.

²⁷² Works, vol. 8, p. 382, vol. 7, p. 130.

²⁷³ Works, vol. 7, p. 278.

²⁷⁴ Works, vol. 7, p. 285.

²⁷⁵ Works, vol. 7, pp. 285, 290, 299. *Federalist*, no. 73.

²⁷⁶ *Federalist*, no. 24.

²⁸⁰ *Federalist*, no. 59.

²⁷⁷ *Federalist*, no. 26.

²⁸¹ *Federalist*, no. 61.

²⁷⁸ *Federalist*, no. 26.

²⁸² *Federalist*, no. 70.

²⁷⁹ Works, vol. 3, p. 495.

²⁸³ Works, vol. 7, p. 131.

legislature could not be trusted with the powers requisite to a good government.²⁸⁴ The popular branch should have as large a constituency as possible, as it represents the liberty and safety of the people; the other branch should be characterized by firmness and knowledge, and be endowed with caution as the former is with sensibility.²⁸⁵ The popular branch is generally, in a republic, stronger than every other department of the government.²⁸⁶ Self-interest will prevent the commonwealths from forbearing to elect members to the federal government.²⁸⁷

A difficulty in understanding clearly Hamilton's theories of the state is his use of the word confederacy. Sometimes he uses it in the modern meaning of the term as a union of several more or less independent states (Staatenbund), and sometimes as a federal state (Bundesstaat).²⁸⁸ His leaning to a strong and vigorous national government made him distrustful of a confederacy, and he was much more in favor of a federal state, a confederated republic, he calls it, composed of comparatively small members of about equal size. He speaks again and again of the dangers of disunion, and doubted if in a state composed of confederated communities, in each of which existed a completely organized government, the common sovereign would have the power to unite the members.²⁸⁹ A state, the fundamental principle of which is that it is a community of sovereigns, is incapable of regulating its own members and is insecure against external dangers.²⁹⁰ Harmony among a number of unconnected states in the same neighborhood is impossible.²⁹¹ Each will pursue a different commercial policy and the competition

Confederacy.

²⁸⁴ *Federalist*, no. 22.

²⁸⁵ *Works*, vol. 1, p. 459.

²⁸⁶ *Federalist*, no. 66.

²⁸⁷ *Federalist*, no. 59.

²⁸⁸ "What is federal? An association of several independent states as one." *Works*, vol. 1, p. 375.

²⁸⁹ *Works*, vol. 1, p. 206.

²⁹⁰ *Federalist*, no. 19.

²⁹¹ *Federalist*, no. 6.

involved in such a course will be a fruitful source of war between them.²⁹² The disunion itself will sacrifice the liberty of each state to the means of defending it against the aggressions of its neighbors.²⁹³ The great evils in a confederacy are that its legislation is for the states which compose it and that it does not act directly on the citizens of the different states.²⁹⁴ The tendency of the members of a confederacy to fly off from the common centre, and for the state in consequence to break up, is another inherent evil.²⁹⁵ There is greater danger from anarchy due to the members than from tyranny in the general government.²⁹⁶ For this the only remedy is force.²⁹⁷ A confederacy in some respects partakes of the nature of feudalism and the separate states in a confederacy may aptly be compared with the feudal baronies.²⁹⁸ A confederacy always has difficulty in borrowing money.²⁹⁹

Federal state. The idea of a federal state is not new nor has its utility been unnoticed.³⁰⁰ "The definition of a Confederate Republic seems simply to be an 'assemblage of societies,' or an association of two or more states into one state. The extent, modification, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished, so long as it exists, by a constitutional necessity, for local purposes, though it should be in perfect subordination to the general authority of the union, it would still be, in fact, and in theory, an association of states, or a confederacy. The proposed constitution, so far from implying an abolition of the state governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign

²⁹² Federalist, no. 7.

²⁹⁶ Federalist, nos. 18.

²⁹³ Federalist, no. 8.

²⁹⁷ Federalist, nos. 16, 27.

²⁹⁴ Federalist, nos. 15, 16, 17.

²⁹⁸ Federalist, no. 17.

²⁹⁵ Federalist, no. 15.

²⁹⁹ Federalist, no. 30.

Works, vol. 2, p. 31.

³⁰⁰ Federalist, no. 9.

power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.³⁰¹ The federal government should rest as much as possible on the people and as little as possible on the commonwealths,³⁰² and the laws of the federal government must apply to the citizens of the commonwealths.³⁰³ Resistance to the laws of the central government by the commonwealths can be remedied by its acting directly on the citizens.³⁰⁴ It is much easier for the commonwealths to encroach on the federal government than the contrary, as local ties are always stronger, and the citizens will always be much more attached to their commonwealth than to the federal government.³⁰⁵ Certain duties must be left to the commonwealths, such as the administration of civil and criminal justice,³⁰⁶ and the internal police regulation, relating to the rights of life and property and the raising of revenue for local purposes.³⁰⁷ But the control of the commonwealths should be with the federal government. The army and navy must be controlled,³⁰⁸ and the militia also,³⁰⁹ and commerce between the members regulated³¹⁰ by the federal government.

Two supreme legislatures cannot exist in the same community, but if by state be meant a number of individual societies or bodies politic, united under one common head, there may be one distinct, complete legislature in each, and these several members still form but one state.³¹¹ The commonwealths can have certain independent powers in which

Divided sovereignty.

³⁰¹ Federalist, no. 9. The meaning is clear, but the use of terms confused.

³⁰² Works, vol. 8, p. 596.

³⁰³ Federalist, no. 15.

³⁰⁴ Federalist, no. 16.

³⁰⁵ Works, vol. 1, p. 477. Federalist, nos. 17, 27.

³⁰⁶ Federalist, no. 17. Works, vol. 1, p. 483.

³⁰⁷ Federalist, nos. 32, 33.

³⁰⁸ Federalist, no. 25.

³⁰⁹ Federalist, no. 29.

³¹⁰ Federalist, no. 22.

³¹¹ Works, vol. 1, pp. 75, 82 note.

their laws are supreme, though within its sphere the laws of the federal government are supreme;³¹² and in other matters their powers are concurrent.³¹³ The balance between the national and commonwealth governments is a double security to the people, each forming a check on the other.³¹⁴ As each commonwealth has a fully organized government with full powers, it can act at once to prevent usurpation or tyranny by the federal government, which gives the people an advantage they do not possess in a monarchy or like form of government.³¹⁵ These commonwealths will prove most useful parts of a state if their powers are limited,³¹⁶ but the larger ones should be divided if a republic is to be preserved.³¹⁷ The extent of territory of a federal state is immaterial.³¹⁸

Federal government. A federal government is more likely to be well administered than that of a commonwealth because better men will take part in the federal councils.³¹⁹ It is better able to repress sedition in its members³²⁰ and to resist usurpers.³²¹ A court of final appeal should be constituted by the general government with power to settle disputes between the commonwealths, and between the citizens and commonwealths and citizens of other countries,³²² and the rights of individuals should not be sacrificed to those of the commonwealths, which are artificial beings.³²³ The state should raise its revenues its own way³²⁴ and must have a general power of taxation,³²⁵ and it must control both external

³¹² *Federalist*, no. 33.

³¹³ *Works*, vol. 1, p. 483, vol. 3, p. 181. *Federalist*, nos. 34, 82.

³¹⁴ *Works*, vol. 1, p. 437.

³¹⁵ *Works*, vol. 2, p. 29. *Federalist*, nos. 26, 28.

³¹⁶ *Works*, vol. 8, p. 263.

³¹⁷ *Works*, vol. 8, p. 521. *Federalist*, no. 9.

³¹⁸ *Federalist*, no. 13. But he seemed earlier to doubt this: *Works*, vol. 1, pp. 363, 370, 376.

³¹⁹ *Federalist*, no. 27.

³²⁰ *Federalist*, nos. 9, 27.

³²¹ *Federalist*, no. 28.

³²² *Federalist*, nos. 22, 80.

³²³ *Works*, vol. 1, p. 393.

³²⁴ *Federalist*, no. 21.

³²⁵ *Federalist*, no. 30.

and internal revenues.³²⁶ To levy imposts a federal government is necessary. Furthermore a government ought to be clothed with all the powers necessary to complete the execution of its trust.³²⁷ If it is intended to establish a federal state, both the commonwealths and the general government must be allowed the most ample authority for fulfilling the objects committed to their charge.³²⁸ No confederacy can properly secure the three great objects of government, agriculture, commerce and revenue, which must be under the supervision and control of a general government.³²⁹ "A government, the constitution of which renders it unfit to be trusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the national interests. Whenever these can with propriety be confided, the coincident powers may safely accompany them."³³⁰ Whatever rights the commonwealths do not expressly grant to the federal government, they retain;³³¹ indeed, they keep all the rights of sovereignty, which they had before and which are not, by the act of union, expressly delegated to the federal government.³³² It is the duty of each branch of a civil society to promote the good of the whole as well as of every other branch.³³³ A sanction to the laws of the federal government is necessary.³³⁴ A single government is much more economical than separate ones.³³⁵ To obtain revenue by regulating the contributions of the members by quotas is a grave enough error to prevent the formation of a state,³³⁶ and the right to an equal vote for each member, regardless of size of population, is another equally serious fault.³³⁷ A federal government must be answer-

³²⁶ *Federalist*, no. 30.

³²⁷ *Federalist*, no. 23.

³²⁸ *Federalist*, no. 23.

³²⁹ *Works*, vol. I, p. 385.

³³⁰ *Federalist*, no. 23.

³³¹ *Works*, vol. I, p. 484.

Federalist, no. 82.

³³² *Federalist*, nos. 32, 17.

³³³ *Works*, vol. I, p. 12.

³³⁴ *Federalist*, no. 21.

³³⁵ *Works*, vol. I, p. 369.

Federalist, nos. 13, 84.

³³⁶ *Federalist*, no. 21.

³³⁷ *Federalist*, no. 22.

able to foreign powers for the conduct of its members.³³⁸ To establish national principles and characteristics is the great object of a statesman.³³⁹ "In a single state where the sovereign power is exercised by delegation, whether it be a limited monarchy or a republic, the danger most commonly is that the sovereign will become too powerful for his constituents. In federal governments where different states are represented in a general council, the danger is on the other side—that the members will be an over match for the common head, or, in other words, that it will not have sufficient influence and authority to secure the obedience of the several parts of the confederacy. . . . The security, therefore, of the public liberty must consist in such a distribution of the sovereign powers as will make it morally impossible for one part to gain an ascendancy over the others, or for the whole to unite in a scheme of usurpation."³⁴⁰ In the case of an empire composed of confederate states, each with a government completely organized within itself . . . the danger is that the common sovereign will not have power sufficient to unite the different members together, and direct the common forces to the interest and happiness of the whole."³⁴¹ The test of a government is "whether it be consistent with that stability and order in government which are essential to public strength, and private security and happiness."³⁴² "There is something noble and magnificent in the perspective of a great Federal Republic, closely linked in the pursuit of a common interest, tranquil and prosperous at home, respectable abroad."³⁴³

³³⁸ *Federalist*, no. 80.

³⁴¹ *Works*, vol. 1, p. 206.

³³⁹ *Works*, vol. 8, p. 436.

³⁴² *Works*, vol. 8, p. 264.

³⁴⁰ *Works*, vol. 1, p. 236.

³⁴³ *Works*, vol. 1, p. 272.

PART IV.

CRITICAL SUMMARY.

Hamilton was, what is rare among statesmen, a political philosopher, and was equalled only by Madison and Wilson in his knowledge of political theory and science. "His great characteristic was his profound insight into principles of government. Whatever in the science of government had been already ascertained; whatever the civil condition of mankind in any age had made practicable or proved abortive; whatever experience had demonstrated; whatever the passions, the interests or the wants of men had made inevitable—he seemed to know intuitively."¹ The theories which Hamilton advanced and developed have been those which the nation has followed, working into his ideas of a centralized state the democratic principles of his great opponent, Jefferson. Hamilton's object was to create a strong national government and it was with this idea before him that he wrote and worked. He believed in a republican form of government but not a democratic, and had little confidence in the people though he recognized that they were the source of all political power. He was not primarily an abstract theorizer but was eminently practical. "In my reasonings on the subject of government," he says, "I rely more on the interests and opinions of men than upon any speculative parchment provisions whatever. I have found that constitutions are more or less excellent as they are more or less agreeable to the natural operation of things. I am disposed not to dwell long on curious speculations, or pay much attention to modes or

¹Curtis, op. cit., vol. I, p. 275.

forms, but to adopt a system sanctioned by experience, adapt it to the real state of the country and depend on probable reasonings for its operation and result."²

Hamilton's writings and speeches cover thirty years, and can roughly be divided into three periods; his first writings at the opening of the struggle with England in 1774 and 1775, the second, from about 1780 to 1789, ending with the Federalist, during which he urged the formation and adoption of a federal government; the third, from the adoption of the constitution till his death in 1804, in which he was engaged in supporting and strengthening the government and enlarging its sphere, dealing mainly with the administration of the government and its finances. This division roughly holds also for his private correspondence.

In his earlier work Hamilton enters most deeply into abstract questions of political theory and it is in the writings of this period that his political philosophy is most clearly stated. The chief of these writings is *The Farmer Refuted*,³ an essay in the defense of the right of the colonists to revolt from England. His central doctrine is that the colonists owed their allegiance to the king and not to parliament and that parliament had no right whatever to pass laws for them. To exercise legislative power is one of the natural rights which are inalienable. The inhabitants of a country are free when they share in making the laws that govern them. The colonists have always been free and parliament can find no authority to enslave them. To disclaim the authority of parliament is not inconsistent with fealty to the king, who is the sovereign bond uniting all parts of the empire. The land of the colonists is held through charters given by the kings, in granting which parliament had no part. Parliament derives all its power from the people of England and they, as they had no rights to the life, property or liberty of the

²Works, vol. I, p. 428.

³Works, vol. I, p. 51.

colonists, could delegate none. Exemption from parliamentary control is provided in the charters. To preserve their rights, subjects may in all cases resort to force, as the right of revolution is a natural one. These theories are based on the then prevalent doctrines of the natural law and the social compact. He quotes Blackstone with approval and recommends the study of Grotius, Locke and Montesquieu. He follows them in his belief in the state of nature as the original condition of man, and in the law of nature as giving natural rights to men. The basis of society is the social compact as that of the government is the governmental compact; by these the rights of the individual are secured to him, though some of his rights he gives up in return for the advantages of united action. The legislature has only the rights given to it by the compact, and the citizen retains the natural rights to share in legislation, to property, to liberty and to revolt. These doctrines are those on which Hamilton based all his political theories, as did his contemporaries. There is no evidence that he changed in any of these views. He developed them somewhat and applied them to other departments of political thought, but he did not get away from the political philosophy of his times. He did not work out a theory of the state or a political philosophy for it was not with this that he was most concerned. What theories he needed as a basis for his reasonings he found in the law of nature and the compact. This was the most advanced political philosophy the world had then seen and the only one that recognized the principles for which he was contending. It had justified the Revolution of 1688 and it was to that that the Americans naturally turned for authority for their course. All the charters given the colonists were based on it and the colonists had been brought up under it. This philosophy was the foundation on which Hamilton based his theories, and in the Federalist, his most finished work, though he made substantial contributions toward the solution of new problems in political science, he

followed the theories he had laid down in *The Farmer Refuted*.⁴

The writings and speeches of the second period deal with the application of Hamilton's theories to government. His problem was to form a new government for a new people. The Americans were, to be sure, an English people, used to living under written constitutions, long trained in self-government and accustomed to freedom, and also a people to whom reason could appeal. His first writing is a letter to Gouverneur Morris⁵ in 1777 in answer to a request for his opinion on a constitution for New York. Instability, he says, is not inherent in democracies, and a representative democracy is the best form of government. The people should elect freely their representatives but cannot be trusted to choose a chief magistrate. The danger with a single legislature is that it will become purely aristocratic. A vigorous executive is a necessity. In his letter to James Duane,⁶ three years later, he says that the fault with the Continental Congress was its weakness. The states had too much power and influence, and the Confederation itself was defective. The commonwealths should have nothing to do with the army. Congress should have a fixed and certain revenue. It was in reality a deliberative body and there should be a proper executive with single men at the heads of the great departments of administration. The only remedy was to give the Congress sufficient power, which could be done if the present body would resume and exercise the powers originally granted to it, or by calling a convention to remodel the government entirely and give Congress complete sovereignty, "except as to that part of the internal police which relates to the rights of life and property among individuals and to raising money by internal taxes." The danger is that the sov-

⁴*Federalist*, nos. 22, 33. Merriam: *American Political Theories*, pp. 103, 121.

⁵*Works*, vol. 7, p. 498.

⁶*Works*, vol. 1, p. 203.

ereign government will have too little power and cannot unite the members.

Hamilton seems to have foreshadowed thus early his later doctrine of implied powers. The Continental Congress should have taken more on themselves;—"they should have considered themselves as vested with full power to preserve the republic from harm,"⁷ and have acted on every possible occasion to the fullest extent of any implied authority.

In the Continentalist,⁸ letters written to a New York paper, he shows that the danger in a state having a single head is that the head will be too strong, and in a confederacy that the members will be too strong. The security of the public liberty must consist in such a distribution of power that one part cannot overcome the others, or the whole unite to suppress the parts. The difficulty with the Confederation was that Congress did not have power enough.

In the Continental Congress Hamilton learned to distrust democracy and to see only weakness in the independence of the states; the failure lay, however, not with Congress but in the weakness of the Confederation.⁹ It was in the Constitutional Convention¹⁰ in 1787 that he developed his scheme of government. In his desire to make the Federal government strong he proposed an aristocracy and the practical abolition of the commonwealths. His proposals were made, not because he thought they would succeed but as an antidote to the weaker plans that preceded, in order to impress on the Convention the necessity of a strong government.¹¹ He did not approve of the constitution as adopted. The central government, according to his ideas, should have been more powerful, but he considered it the strongest that could be secured, and

⁷Works, vol. I, p. 204.

⁸Works, vol. I, p. 236.

⁹Works, vol. I, p. 311.

¹⁰Works, vol. I, p. 331.

¹¹Works, vol. 8, p. 607.

supported it to the best of his ability. In the *Federalist* he urged by every argument possible the adoption of the constitution, and it is in this that he shows the theories on which it rests and the political philosophy which was its basis. The work thus has a wider scope than a commentary on the constitution, and is a commentary on the federal state in general. The founders of the United States developed the federal state of to-day and made its success certain, and it is to their writings that we look for its genesis. "All preceding associations of republics or of democratic states were simply leagues. The quality peculiar to the idea that a duality of governments was adaptable to the states independently, and, also to a consolidated union of them, must be accepted as the invention of Hamilton's creative mind."¹² "The glory of having been the first to suggest the design of the double government has been claimed for Hamilton on good but not undisputed grounds—the fact, doubtless, is that the time had arrived when this truth must have become known to mankind."¹³ As appears from the report of the convention no member had this idea clearly in mind when they went into the convention, but it came as the best solution of a very difficult problem and won the approval of all. Hamilton grasped clearly the idea of a federal state and placed it on a firm basis of reasoning and logic.¹⁴

¹²Shea: *Life and Epoch of Alexander Hamilton*, p. 100.

¹³Morse: *Life of Alexander Hamilton*, vol. I, p. 189.

¹⁴Professor Johnston's explanation of Hamilton's alleged anti-republican sentiments is the clearest. "One thing is certain as to Hamilton: there is not in any of his letters or other writings a trace of a desire to introduce monarchy or aristocracy into the American political system. The charge of anti-republicanism is, to that extent, unfounded, but it had, in reality, a different basis which can best be seen by considering Hamilton's political work. When the American revolution was successfully accomplished there was but one field in which Americans had ever enjoyed republican government, the governments of their states, or "republics" as they were then often, and are still sometimes, called. In the government of the British empire they had never shared, and the government of the confederation was a shadow only of republican government. From 1781 until 1789 Hamilton was actively engaged in opening to them a new field for republican government, and from 1789 until 1800 he was as busily

The writings of Hamilton, after the adoption of the constitution, deal with public questions of administration. He labored to give the government the strength which he had tried to have secured to it in the constitution. His reports as Secretary of the Treasury, his advocacy of a national banking system and his unceasing efforts in every department of the government, so long as the Federalists were in power, were all directed to the same end. It was through a national bank that he sought to enlist the rich and aristocratic elements, which he thought so essential to the support of the government. He advocated the establishment of a bank as early as 1780,¹⁵ and each year he was more deeply impressed with its necessity. Three state papers especially deal with Hamilton's financial policy and theories. The First Report on the Public Credit,¹⁶ the Report on a National Bank,¹⁷ and the Report on Manufactures.¹⁸

The first report deals with the public debt, which Hamilton explains consisted of three items, foreign and domestic debts and those due to the states, all of which he argued should be assumed by the federal government. To meet these he proposed funding the entire amount and creating a national debt. His object was thus to win to the support of the government the people's invested capital and bind to it the moneyed interests. To raise sufficient revenue to meet these debts Hamilton proposed the establishment of an excise. He wished in general to avoid direct taxation and to get his revenue from luxuries. Imports had

engaged in extending that field by establishing a broad construction of the powers of the new federal government. But in both of these endeavors he was really, so far as the experience of his opponents taught them, anti-republican in diminishing the powers of the first exponents of republican government; and here lies the real basis of the charge against him." Lalor: *Cyclopedia of Political Science*, art. Hamilton.

¹⁵Works, vol. 1, p. 223.

¹⁶Works, vol. 2, p. 47, Jan. 1790.

¹⁷Works, vol. 3, p. 125, Dec. 1790.

¹⁸Works, vol. 3, p. 294, Dec. 1791.

already been taxed as high as commerce would then bear. He also established a mint and made the currency uniform. The advantages of a bank, he explained, were: an increase of the active capital, greater facilities for the general government in exchanges and in collecting and borrowing, and the supply to the whole people of a circulating medium. All these would strengthen the general government wonderfully, would attach to it even more strongly the moneyed classes and put it on a solid financial basis. A national bank was "a usual engine in the administration of national finances and an ordinary and most effectual instrument of loan." This fact "pleads strongly against the supposition that a government clothed with the most important prerogatives of sovereignty in relation to its revenues, its debts, its credit, its trade . . . is forbidden to make use of this instrument as an appendage to its own authority."¹⁹

The report on manufactures contained Hamilton's recommendation for a national protective tariff for the nascent industries of the country, and for this, as for the bank, he finds constitutional authority in the wide expression of the "right to provide for the general welfare."²⁰ and in the implied powers.

The doctrine of implied powers Hamilton brought forward in answer to the objection that the establishment of a national bank was beyond the power of Congress and therefore unconstitutional. This doctrine gives a loose or broad construction to the "elastic" clause of the constitution,²¹ which provides that Congress shall have power to make all laws necessary and proper to carry out the powers vested by the constitution. A doctrine of this kind in regard to government he seems to have had in mind in 1780. "Undefined powers are discretionary powers, limited only by the object for which they were given."²² He developed this more fully in the *Federalist*, where he says, "every power

¹⁹Works, vol. 3, p. 223.

²⁰Constitution, Art. I, sec. 8, § 18.

²¹Constitution, Art. I, sec. 8, § 18.

²²Works, vol. 1, p. 204.

ought to be commensurate with its object; there ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation," or in other words, "A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people."²³

The statement as to the constitutionality of the national bank is to the same effect. "Every power vested in a government is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, and which are not precluded by restrictions and exceptions specified in the constitution, or not immoral or contrary to the essential ends of political society."²⁴ The implied powers are incidental to those expressly granted. This doctrine he urged in every way and in every measure, with such reasoning that Marshall said he could not add to it, and with such force and vigor that it became the doctrine of the Federalist party and has been that of its successors since. All his energy he devoted to ensuring its permanency.

Hamilton's political philosophy was always constructive and positive. He held that order is the source of liberty and that the union of public strength and individual security alone brings liberty. He believed that the state should be a nation.

²³ *Federalist*, no. 31.

²⁴ *Works*, vol. 3, p. 181.

VITA

Roland Jessup Mulford was born May 27, 1871, near Friendsville, Pa. In 1880 he moved to Cambridge, Mass., and received his education in the public schools there, entering Harvard College in 1889 from the Cambridge Latin School. He was awarded Second Year Honors in Classics at Harvard; and graduated, with the degree of A. B. in 1893. The following year he was a master at St. Mark's School, Southborough, Mass. He then returned to Harvard and went through the Law School, receiving the degree of LL. B. in 1896. The next three years he was a master at Pomfret School, Pomfret, Conn. In the fall of 1899 he entered the Johns Hopkins University, taking politics as his principal and history and economics as his subordinate subjects. He held a fellowship in politics in 1900-1901. In April, 1901, he was elected Head Master of the Country School for Boys in Baltimore. In May, 1903, he was elected Head Master of Cheshire School, Cheshire, Conn.

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